XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(33)

**मामला क्रमांक ..... सन् 200**

**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश |
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| | Criminal Appeal No.2549/1999 | |
| | APPELLANT: | Ramratan, S/o Goverdhan, aged about 48 years, Occupation Agriculturist, Resident of Amravatipur, P.S. Chalgali, District Surguja, M.P. (now Chhattisgarh). |
| | | - Versus - |
| | RESPONDENT: | State of M.P. (now Chhattisgarh), through Police Station Chalgali, District Surguja, M.P. (now Chhattisgarh) |
| | | AND |
| | Criminal Appeal No.2478/1999 | |
| | APPELLANTS: (In Jail) | 1. Ramlal, S/o Thuru, aged 60 years, Resident of Village Padiya, P.S. Chalgali. |
| | | 2. Dilchand, S/o Ramlal, aged 30 years, Occupation Agriculture, Resident of Amravatipur, P.S. Chalgali, District Surguja, M.P. (now Chhattisgarh) |
| | | - Versus - |

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(34)

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RESPONDENT: State of M.P. (now Chhattisgarh), through Police Station Chalgali, District Surguja, M.P. (now Chhattisgarh)

(Criminal appeals under Section 374 (2) of the Cr.P.C.)

**Division Bench**: - **Hon'ble Shri L.C. Bhadoo &**
**Hon'ble Shri Dhirendra Mishra, JJ.**

**3-7-2007**:-

Smt. Mala Dubey, Advocate, appears on behalf of Dr. T.N. Dubey, Advocate for the appellant in Cr.A. No.2549/99.

Shri M.K. Baeg, counsel for the appellants in Cr.A. No.2478/99.

Shri U.N.S. Deo, Additional Public Prosecutor for the State/ respondent.

Oral judgment dictated on *Dais*.

**L.C. Bhadoo, J.**

Cr.A. No.2549/99 filed by Ramratan and Cr.A. No.2478/99 filed by Ramlal & Dilchand are being disposed of by this common judgment, as both the appeals are arising out of the same incident.

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These appeals are directed against the judgment of conviction and order of sentence dated 31st August, 1999 passed by the 1st Additional Sessions Judge, Ambikapur, in S.T. No.308/98 whereby learned Additional Sessions Judge after holding the accused/ appellants guilty for commission of offence under Sections 302 read with Section 34 and 201 of the I.P.C., sentenced each of the accused/ appellants to undergo imprisonment for life and to undergo R.I. for 4 years, respectively. It was further directed that both the sentences shall run concurrently.

Brief facts of the prosecution case are that daughter of accused Ramratan was married on 15-6-98. Bandhu (since deceased) went to the house of Ramratan, he consumed food there along with accused persons. He died about 3 p.m. in suspicious circumstances, therefore, accused Dilchand gave merg intimation Ex.-P/19 in the Police Station Chalgali to the effect that after consuming food Bandhu started vomiting and he died. Deceased Bandhu had consumed liquor with accused persons Ramratan, Dilchand and Ramlal. Based on merg intimation Ex.-P/19, Station House Officer, Police Station registered first information report Ex.-P/18 on 16-6-98. The Investigating Officer left for scene of occurrence, after giving notice Ex.-P/2 to the Panchas, prepared inquest Ex.-P/3 on the body of

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**आदेश पत्रक (पूर्वानुबद्ध)**

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Bandhu. Site plan Ex.-P/4 was prepared. Copy of the revenue record (Ex.-P/6 & Ex.-P/7) of land of Bandhu was obtained. Statements of Mohanlal and Budhiyaro Ba were got recorded under Section 164 of the Cr.P.C.. The body of Bandhu was sent for postmortem examination to the Primary Health Centre, Wadrafnagar where Dr. P.L. Verma (PW-9) conducted postmortem on the body of Bandhu and opined that cause of death is asphyxia due to compression of neck. The death is homicidal in nature. Viscera were also preserved but no viscera report was received till filing of the charge sheet.

After completion of the investigation, charge sheet was filed against the accused persons in the Court of Judicial Magistrate, 1st Class, Ramanujganj, who in turn committed the case to the Sessions Judge, Ambikapur, from where learned 1st Additional Sessions Judge received the case on transfer.

The prosecution in order to establish charges against the accused persons examined 11 witnesses. Statements of the accused persons were recorded under Section 313 Cr.P.C. in which they denied material appearing against them in the prosecution evidence.

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Learned Additional Sessions Judge after hearing counsel for the respective parties, convicted and sentenced the accused persons as aforementioned.

We have heard learned counsel for the parties.

In this case, Mohanlal (PW-7) and Budhiyaro Bai (PW-3) were cited as eyewitnesses to the incident in order to establish that in their presence the accused persons strangulated the deceased. Even their statements under Section 164 Cr.P.C. were got recorded but both these witnesses have turned hostile and they have not supported the prosecution case. PW-3 Budhiyaro Bai has stated that Bandhu was known to her. She saw Bandhu lying dead on the cot in the house of Ramratan. She does not know how he died. She did not see the accused persons pressing neck or committing his murder. On the fateful day, she went to the house of Ramratan, as she was invited to take meal at his residence on the occasion of marriage of daughter of Ramratan. She saw that Bandhu was lying dead in the house of Ramratan. She was declared hostile. On cross-examination by A.P.P., she has categorically denied that it is incorrect to say that Dilchand was sitting on the body of Bandhu and Ramratan was pressing his neck. Similarly, PW-7 Mohanlal has also been declared hostile and he has not supported the case of the prosecution. He has stated that he does

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not know how Bandhu died. There is no ocular evidence to establish charges against the accused persons committing murder of the deceased by pressing his neck.

The fact remains that the dead body was found in the house of Ramratan and presence of Ramratan, Dilchand and Ramlal is established by evidence of PW-3 Budhiyaro Bai and PW-7 Mohanlal. Now question remains whether the prosecution has been able to establish by circumstantial evidence the fact that death of the deceased was due to asphyxia on account of pressing of neck? In this case, Dr. P.L. Verma (PW-9) has been examined who conducted postmortem on the body of the deceased. He has stated that he noticed following injuries on the body of the deceased:-

(i) Contusion on the right temporal region extending up to right ear in the size of 12 x 9 cm;

(ii) Contusion on the right shoulder in the size of 10 x 6 cm;

(iii) Contusion on the chest which was on the half area of the neck in the size of 15 x 12 cm;

(iv) Contusion on the right elbow in the size of 9 x 8 cm;

(v) Contusion of the left elbow in the size of 9 x 7 cm.

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On internal examination, lungs, throat, wind pipe were congested. Remaining organs were healthy. Both the ~~parts of~~ chamber of heart were empty. Smell was emanating from the stomach. Smell of alcohol was also present. Injuries were caused by hard and blunt object and same were ante mortem in nature. Viscera were preserved for chemical examination. Cause of death was asphyxia as a result of strangulation. In cross-examination, he has stated that injuries were visible by mere visual inspection. There was no ligature mark on the neck but there was contusion on the neck. There was strangulation on account of sudden pressing of the neck by anything. On account of compression death occurred. If neck is pressed by hands, then there must be signs of throttling. Such signs were not present. Had it been so, he would have definitely mentioned. The Investigation Officer after receiving information immediately left for scene of occurrence and prepared inquest Ex.-P/3 in the presence of Panchas. It has been mentioned that Bandhu died on account of consumption of liquor (Hadiya). Wife of the deceased expressed doubt regarding his death on the ground that there was animosity between Ramratan and her husband, therefore, he might have committed his murder by administering poison. Therefore, it was decided that body should be sent for postmortem examination. It has been mentioned that both eyes and mouth were closed. Neck was in

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swollen condition. The body was in ordinary condition. Nails and palms were ~~normal~~ pale. It has further been mentioned that the body of the deceased was seen after turning and there were no visible injuries on the body. The Investigating Officer found that neck was in swollen condition, death of Bandhu was in suspicious circumstances, therefore, on the request of wife of the deceased, it was decided that body be sent for postmortem examination. Therefore, doctor's evidence is contrary to the inquest report Ex.-P/3 in which it has been mentioned that there was no visible injury on the body of the deceased. Further, if statements of Budhiyaro Bai and Mohanlal recorded under Section 164 Cr.P.C. are seen, it has been mentioned that neck of the deceased was pressed by Ramratan with both the hands. These witnesses have not supported their previous statements. As per doctor's evidence, had neck was pressed by the hands, there must have been marks on the neck, but no such marks were found on the neck of the deceased. Even signs of strangulation were not present on the body, as per the inquest report because mouth was closed, tongue was not coming out from the mouth. No other symptom of strangulation was found. Moreover, it is established that the accused persons and the deceased consumed liquor, viscera were preserved, viscera report has not been placed on record by the prosecution, therefore, in the given situation, eyewitnesses have turned hostile and circumstantial

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evidence is not clinching in order to connect the accused persons with the death of Bandhu.

For the foregoing reasons, conviction of the accused/appellants for commission of offence under Sections 302 read with Section 34 and 201 of the I.P.C. cannot be sustained, as same is not based on legal evidence.

In the result, appeals filed by the accused/appellants succeed. They are acquitted of the charges under Sections 302 read with Section 34 and 201 of the I.P.C. Accused Ramlal is stated to be on bail, his bail bonds are discharged, he need not surrender to the bail bonds. Accused Ramratan and Dilchand are in detention since June, 1998, thereby they are in custody for about 9 years, they are directed to be released forthwith, if not required in any other case.

**Sd/-**
**L.C. BHADOO**
**Judge**

**Sd/-**
**DHIRENDRA MISHRA**
**Judge**

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